

APPEAL NO. 170230
FILED MARCH 20, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). An expedited contested case hearing (CCH) was held on January 2, 2017,¹ in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the Texas Department of Insurance, Division of Workers' Compensation (Division) acted in accordance with Section 410.023 and 28 TEX. ADMIN. CODE § 141.1 (Rule 141.1) in denying the appellant's (self-insured) Request to Schedule, Reschedule or Cancel a Benefit Review Conference (BRC) (DWC-45) on the issue of supplemental income benefits (SIBs) on October 25, 2016.

The self-insured appealed, arguing that it complied with the requirements of Rule 141.1(d) and that, for such reason, the Division did not act in accordance with Section 410.023 and Rule 141.1 in denying its request for a BRC. The respondent (claimant) responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant sustained a compensable injury on (date of injury). The claimant filed her Application for [SIBs] (DWC-52) for the 18th quarter with the self-insured on October 14, 2016. Pursuant to Rule 130.108(c), the self-insured filed with the Division its DWC-45 requesting a BRC to dispute the claimant's entitlement to the 18th quarter of SIBs on October 24, 2016, a date within 10 days after the self-insured's receipt of the claimant's DWC-52. On October 25, 2016, the Division denied the self-insured's request for a BRC for the reason that the claimant's address listed in the DWC-45 was her former address and not the current address to which she had recently moved. The self-insured filed an amended DWC-45 listing the claimant's correct address on October 27, 2016, a date more than 10 days after the self-insured's receipt of the claimant's DWC-52.

Rule 141.1, effective October 1, 2010, provides in part:

(d) Request for [BRC]. A request for a [BRC] shall be made in the form and manner required by the [D]ivision. The request shall:

¹ We note that in the Statement of the Case section of her decision the hearing officer mistakenly indicated that the date of the CCH was December 14, 2016.

- (1) identify and describe the disputed issue or issues;
 - (2) provide details and supporting documentation of efforts made by the requesting party to resolve the disputed issues, including but not limited to, copies of the notification provided in accordance with subsection (a) of this section, correspondence, e-mails, facsimiles, records of telephone contacts, or summaries of meetings or telephone conversations . . . ;
 - (3) contain a signature by the requesting party attesting that reasonable efforts have been made to resolve the disputed issue(s) prior to requesting a [BRC], and that any pertinent information in their possession has been provided to the other parties . . . ; and
 - (4) be sent to the [D]ivision and opposing party or parties.
- (e) Complete Request. A request that meets the requirements of subsection (d) of this section is a complete request for a [BRC]. The [D]ivision will schedule a [BRC] if the request is complete and otherwise appropriate for a [BRC].
- (f) Incomplete Request. A request for a [BRC] that does not meet the requirements of subsection (d) of this section is an incomplete request and will be denied.
- (1) A denied request for a [BRC] does not constitute a dispute proceeding, except as provided by subsection (g) of this section.
 - (2) The [D]ivision will notify the parties if a request is denied and state the reasons for the denial.
 - (3) Upon notice from the [D]ivision, the requesting party may submit a new request for a [BRC] that meets the requirements of this section.
- (g) Incomplete Request Denials. If a party disagrees with the [D]ivision's determination that the request was incomplete, or, if a party has good cause for failing to meet the requirements of subsection (d) of this section, the party may pursue an administrative appeal of the [D]ivision's determination in accordance with [Rule] 142 of this title (relating to Dispute Resolution—[CCH]). The party may also request an expedited [CCH] in accordance with [Rule] 140.3 of this title (relating to Expedited Proceedings).

In her decision the hearing officer indicated that the self-insured's failure to provide the claimant's current mailing address on its initial DWC-45 amounted to a failure to request a BRC "in the form and manner required by the Division," reasoning that the Division relies upon the information contained in the DWC-45 to be correct and that if such information is found to be incorrect, it is reasonable that the request be denied.

Under the facts of this case, we disagree. The record reflects that the self-insured filed a dispute of the claimant's entitlement to SIBs for the 18th quarter within 10 days after receiving the claimant's DWC-52 as provided by Rule 130.108(c) by requesting a BRC. The record further reflects that the self-insured's DWC-45 met the requirements of Rule 141.1(d)(1)-(4) in that it identified and described the disputed issue; documented efforts made by the self-insured to resolve the disputed issue; contained a signature by the requesting party attesting that reasonable efforts had been made to resolve the disputed issue; and was sent to the Division, the claimant's attorney and to the claimant. We note that while the original DWC-45 lists the claimant's former address, which is the address listed on her DWC-52 for the 18th quarter, the self-insured delivered a copy of its DWC-45 on October 25, 2016, to the claimant's current address.

Having determined that the self-insured properly disputed the claimant's entitlement to SIBs for the 18th quarter by filing a DWC-45 meeting the requirements of Rule 141.1, we reverse the hearing officer's decision that the Division acted in accordance with Section 410.023 and Rule 141.1 in denying the self-insured's DWC-45 on the issue of SIBs on October 25, 2016, and render a new decision that the Division did not act in accordance with Section 410.023 and Rule 141.1 in denying the self-insured's DWC-45 disputing the claimant's entitlement to SIBs for the 18th quarter on October 25, 2016.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 WEST 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge